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The April Meeting and the Denver Juvenile Court

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The April Meeting

and

The Denver Juvenile Court

THE regular meeting of the Association was held on April 2, 1928, at 12:15 in the Chamber of Commerce dining room.

President Robert L. Stearns presided, and first called upon Judge Charles C. Sackman of the District Court to make a report on behalf of the Library Committee.

Judge Sackman reported that this Committee, composed of Paul P. Prosser, as Chairman, and Fraser Arnold and himself, at the suggestion of President Stearns, had consulted with Mayor Benjamin F. Stapleton and the City Council and had obtained an appropriation of $2,000 to be used for the maintenance, equipment and operation of the Bar Association Library at the Court House during the year 1928. He acknowledged the cooperation of Mayor Stapleton, George P. Steele, a member of this Association and the Chairman of the Finance Committee of the City Council, George Begole, City Auditor, and H. J. Raymond, Clerk of the District Court.

The President then announced that the receipt of this money necessitated a change in the By-Laws, which amendment would be offered at the annual meeting, to be held April 30, 1928.

Mr. William E. Hutton, Chairman

of the Nominating Committee was then called upon who made the report mentioned elsewhere in this issue.

The President then called upon Judge Frank McDonough, to introduce the Honorable Robert W. Steele, Judge of the Juvenile Court, as the speaker of the day.

Judge McDonough, in introducing Judge Steele, paid a tribute to the character and attainments of his father, who was Chief Justice of the Supreme Court of the State of Colorado. He recalled the friendship that existed between himself and Judge Steele's father. He commented upon the great public service being rendered by Judge Steele in the Juvenile Court in dealing with the problem of saving children from crime and disgrace.

Judge Steele then delivered a most interesting address on "Civil Jurisdiction and Procedure in the Denver Juvenile Court", which was as follows:

"The Juvenile Court was created and may be abolished by the Legislature. It has no general jurisdiction. Its powers, authority and procedure are prescribed in detail in the original act creating it and in various amendments and other special acts enacted since it came into being in 1907. Every case filed and every matter considered by the Court concerns, in some way, one or more minors, although the majority of the orders, judgments and decrees are directed to adults. Considering the formal trials or hearings, one day in each week is sufficient to dispose of the so-called children's cases, that is, where the child itself is before the Court for discipline, correction or commitment because of some act done by the child, whereas two or three days in each week are devoted exclusively to trials and hearings where children are involved but where the conduct or misconduct of adults is the real matter at issue. It was a surprise to me to learn that in more than half of the cases tried, the parties on both sides are adults and the children do not appear in Court at all. About 90% of all the cases fall under one of three main subdivisions of what may be called the civil jurisdiction of the Court, namely: 1st—Cases alleging delinquency, 2nd—those alleging dependency and 3rd—those charging contributory delinquency or contributory dependency. And first of Delinquency—

"The first act defining a delinquent was passed in 1903 and applied only to children 16 years of age or under, that is, to those who had not attained their 17th birthday. In 1923 this act was amended and the age limit raised. How far it went up I am in some doubt. The original act consisted of 12 sections, all but 2 of which are still in full force and effect. The amendment of 1923 repeals the first section of the old act and recites that said section shall be amended to read as follows: 'This Act shall apply only to children *under 18 years* of age,' etc. Then follows the new definition of a delinquent child, the act stating: 'The words 'delinquent child' shall include any child *18 years of age or under such age* who' does any one of 43 things. A child under 18 has not reached its 18th birthday, but a child 18 or under is one who has not reached its 19th birthday. Inasmuch as the first portion of the act quoted applies to the entire remaining 10 sections of the original act, and the second part quoted is primarily a definition, I have construed the two parts, although hopelessly conflicting, in the only way in which the entire act can be applied, namely, by considering a delinquent as a child who has not reached its 18th birthday. I believe the Legislature intended to raise the age limit two years, but this construction raises it but one year. In a recent decision, handed down only last month, our Supreme Court said: 'By our so-called Delinquency statute, a child 18 years of age or under who

is incorrigible, or who is growing up in idleness or crime, is declared to be a delinquent,' but the opinion does not state the age of the child involved in the case, nor was the question of the apparent conflict in the statute squarely raised or necessarily decided. In the case of People ex rel Cruz vs. Morley, 77 Colorado 25, the Court, construing the amendment of 1923 to the original Juvenile Court Act, holds that the Juvenile Court has exclusive jurisdiction in all matters, except criminal cases, concerning those 18 or under, but the relator Cruz was a boy 17 years of age and the statute under observation includes dependency matters as well as delinquency and there is no ambiguity as to age in the law defining a dependent. Consequently, in spite of these two decisions, I still believe the matter is open for speculation.

"Proceedings against delinquents are initiated by the filing of a petition. Any reputable person, having knowledge of a child in his county who has committed acts of delinquency, may file the petition. Upon the filing thereof, notice or summons is issued and served on the parents or guardian of the child, fixing the day for the hearing not less than six days from the day of service. The child, or some one in its behalf, may demand a trial by jury, which shall be granted as in other cases unless waived, says the statute. At the conclusion of the trial, the child, if found to be a delinquent, is either placed on probation under the disciplinary care and direction of the court, or committed to an institution. Boys under 16 and over 10 may be sent to the Industrial School for Boys at Golden and kept there until they reach the age of 18. If 16 or over, they may be sent to the State Reformatory at Buena Vista for an indeterminate period. Girls over 6 and under 18 may be committed to the Industrial School for Girls at Morrison, and kept there until they reach 21.

"At present, there are over 500 boys reporting periodically under probation to the officers of the Court. Commitments to Golden since July 1, 1927, number about 25. Less than 100 girls are on probation. Commitments to Morrison since July 1, 1927, numbering about 20.

"It was apparently the intention of the framers of the act concerning delinquents and the procedure for dealing with them, to, by that act, abolish the criminal law in so far as it applied to minors within the age of delinquency, except as to crimes of violence punishable by death or imprisonment for life where the accused was over 16. The act expressly states that it shall not apply to such crimes.

"In the Cruz case, referred to a moment ago, the contention was made that a person under 18 cannot be a criminal. One Manuel Cruz, 17 years of age, was indicted in the district court for burglary, larceny and receiving stolen goods, crimes not punishable by death or life imprisonment. His plea to the jurisdiction of the district court was overruled and he brought original proceeding in the Supreme to prohibit the district court from proceeding. The Attorney General and two deputies appeared for the people, the district attorney and one deputy appeared for the District Judge; 10 prominent and eminent members of the Denver Bar joined with the attorney general for the petitioner and the Judge of the Juvenile Court and one other prominent and eminent member of the bar appeared as friends of the Court. A rehearing was granted and the matter argued ably and adroitly on all sides. The Court held that the District Court had the power to try the relator Cruz, that the criminal laws had not been abolished as to those 18 or under, that a minor 18 or under can commit a crime and be prosecuted as a criminal, and that the district court, having first

acquitted jurisdiction, could control the case.

"Whether or not a trial to final determination, under a delinquency petition, alleging as an act of delinquency a violation of law which would amount to a felony, would constitute a bar to a subsequent prosecution in the criminal courts for the same offense, I am not fully advised. The district attorney is of the opinion that it would not be a bar. I am rather inclined to disagree with him, but have not as yet been called upon to make a decision.

"I am in some quandry to know just how loose and informal the proceedings should be in delinquency cases. Certainly the stiff formalities and atmosphere of the criminal court should be and have been entirely done away with. Trials are had in chambers. Witnesses, however, especially adults, are required to be sworn before testifying. In no case, since I have been in the Court, has a jury trial been demanded in delinquency matters. In the recent case decided — February, 1928—which I mentioned, the Supreme Court said: 'Proceedings under this act are not criminal or penal, but protective' and also said: 'We, therefore, hold that this is a special statutory, civil proceedings and not a criminal action.' But the Court in that case reversed the County Court of an outside county because the lower court refused to grant a jury trial upon request of the mother of one of the alleged delinquents, even though it appeared that the request was made after the trial had been in progress for some time. The Court also dismissed a petition against one boy which charged incorrigibility when the proof showed he had only stolen one automobile. 'This alone', says the Court, 'does not constitute either incorrigibility or growing up in idleness or crime.' This decision, even while it states that the proceedings are civil and protective and not criminal, induces in me the opinion that our Supreme Court believes that certain rules of law and fundamental principles of justice are to be kept in mind even when the Court is dealing with minors in the capacity of parent. The New York Court of Appeals, in a case decided about a year ago, reversed a decision of the Children's Court of Buffalo under a proceeding very similar to ours. A minor had been charged with being a delinquent in that he had committed what would amount to burglary or larceny. He was committed to a Reform School. The Court said—

"There must be a trial; the charge against the child cannot be sustained upon mere hearsay or surmise. The child must first have committed the act of burglary or of larceny before it can be convicted of being a *delinquent child*. The act remains the same and the proof of the act is equally necessary whether we call it burglary, larceny or delinquency. The name may change the result. It cannot change the facts. The proceedings resulted in a conviction and a sentence. Call it what we will—which deprived the boy of his liberty. The Court in the interest of the child called such a proceeding a hearing and the offense delinquency, not burglary or larceny. The facts, however, of the charge must be proved against the child in the same way as if the charge were made against an adult; that is, by competent evidence. This was not done. The evidence taken in this case was not competent or sufficient to convict an adult; therefore it was insufficient to convict the boy. Our activities in behalf of the child may have been awakened, but the fundamental ideas of criminal procedure have not been changed. These require a definite charge, a hearing, competent proof and a judgment. Anything less is arbitrary power.'

"I believe nearly three-fourths of

all boys brought before the Court are charged with what would amount to burglary or larceny or both if committed by an adult.

"The second main source of civil jurisdiction of the Court is the Dependency statute. Like delinquents, a dependent was originally defined as a child under 16 who is dependent upon the public, etc. By the act of 1923, a dependent child is one under 18 who, etc. This amendment, however, goes even further than *raising* the age limit, and takes in a class of children seldom recognized by legislative fiat, namely, unborn children. 'The laws of this state', says the statute, 'concerning dependent or neglected children, or persons who cause, encourage or contribute thereto, shall be construed to include all children under the age mentioned herein from the time of their conception and during the months before birth.' It is due to the unwillingness on the part of the medical profession to make positive statements, and not the fault of the law, that the court has been unable to give this provision the full effect intended by its language.

"Here again, proceedings are instituted by petition which any person, resident of the county, may file. Citation or summons issues, fixing the day for the hearing, not less than two days after service.

"Upon the hearing, if the child is found to be dependent, it may be committed to the State Home for Dependent Children, or the Court may make such disposition of the child by adoption or guardianship or otherwise as seems best for its moral and physical welfare. Most of the cases filed under this authority concern abandoned, illegitimate, homeless or neglected children, usually of very tender age, and in nearly all of these, the children are sent to the State Home. There are a great many cases, however, filed under this statute, where custody as between parents or others is the main issue. A controversy over the custody of a child, makes the child a dependent, according to the statute, and many parents institute bitter contests in the Juvenile Court for custody of their children. Sometimes they are divorced and oftentimes the divorce court has made orders awarding custody to one or the other.

"The amendment of 1923 to the original Juvenile Court Act contains three somewhat inconsistent statements in the same paragraph. 'Such Courts' (meaning Juvenile Courts) says the statute, 'shall have *exclusive* jurisdiction in all cases concerning dependent children,' etc., 'provided that nothing in this act shall be construed to revoke or interfere with the jurisdiction, practice or proceedings as now provided by law in other courts of record in this state in cases in such courts relating to the custody or disposition of children in divorce cases, provided that the disposition of children in any divorce case shall not be held to interfere with the jurisdiction of the Juvenile Court in cases concerning the dependency of such children. Fortunately, our Supreme Court has untangled this apparent scramble. In the case of People vs. Juvenile Court, 75 Colorado, 493, an original proceeding for a Writ of Prohibition, it appeared that the district court, in a divorce case, had awarded the custody of three children to the father, but had granted a stay. During the stay, the mother filed a petition in the Juvenile Court, alleging that the children were dependent because a controversy was waging over their custody. The Juvenile Court, over the objection of the father, awarded the children to the mother. After quoting the portions of the Act which I have quoted, the Court said: 'We must harmonize these sentences if we can. We have concluded that the most reasonable construction of the whole section is that the Juvenile

Court, having exclusive jurisdiction in matters concerning the dependency of children, is not to be deprived of that jurisdiction by proceedings with reference to children in the divorce court, that the divorce court may proceed with reference to children as heretofore, subject to the power of the Juvenile Court to deal with those children if they are or become dependents. The result in the present case would be that since the children are accused of dependency in the Juvenile Court, it can proceed, and when that dependency is denied, it has jurisdiction to try that issue of fact.'

"This is the only harmonious interpretation which could have been made, but the effect of the decision and the statute is that parents in a divorce suit may, as they often do, engage in bitter fights over custody of children. Many days are often consumed in the taking of testimony as to fitness or unfitness of one parent or the other. At the conclusion of the hearing, and after the divorce court judge has struggled to make a just award, there is nothing to prevent the losing party from immediately filing a dependency petition in the Juvenile Court and going through the same trial over again, and this can be done without the payment of any docket fees, witness fees, sheriff's fees or other court charges or expenses, and can also be tried to a jury if either side requests it.

"For your information, a dependent child is defined to be "any child under the age of 18 years who is dependent upon the public for support, or who is destitute, homeless or abandoned; or who has not proper parents; care of guardianship, or who in the opinion of the Court, is entitled to support or care by its parent or parents where it appears that the parent or parents are failing or refusing to support or care for said child; or who habitually begs or receives alms, or who is found living in any house of ill fame, or with any vicious or disreputable persons, or whose home, by reason of neglect, immorality or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child, or whose environment is such, or about whose custody a controversy is such as to warrant the State, in the interest of the child, in assuming or determining its guardianship, or in determining what may be for the best interest of said child.'

"The third general classification of civic jurisdiction concerns those who contribute to dependency, neglect or delinquency, and was conferred upon the Juvenile and County Courts by act of the Legislature, comprising 10 sections, approved April 28, 1909. No case has ever been reviewed by the Supreme Court involving this statute.

"Briefly, it provides that any person who shall encourage, cause or contribute to the dependency, neglect or delinquency of a child, shall be proceeded against as provided by the act.

"Again, a petition is the first step which any reputable person may file. Summons thereupon issued, requiring all persons named to appear at a certain time not less than 6 days after service. If the petitioner makes affidavit that there are good reasons to believe the person proceeded against will leave the jurisdiction of the Court before the day set for hearing, a warrant may be issued, directed to the sheriff commanding him to bring the person named forthwith before the Court, whereupon the Court may make such interlocutory orders as are proper in the premises.

"If, upon the hearing of the case in court, the court is satisfied, says the statute 'that the person proceeded against is responsible for or has caused, encouraged or contributed to the neglect, dependency or delinquency of the child or children named, the court may *enter judgment determin-*

ing such facts and requiring such person to do or omit to do any act or acts complained of in the petition.

"Trial by jury may be had if demanded and if the finding of the jury be against the person tried, the verdict shall so state, in which event the court, in its discretion, may enter such judgment as it seems needful in the premises.

"This statute is the authority under which about 60 cases a month are filed by mothers of children, separated from the fathers, asking that the fathers be made to support the children, and naturally, under it come many cases concerning illegitimate unborn children. About $60,000.00 a year is paid into court under orders made in such cases and an average of 5 a week are hearing on citations or attachments in contempt proceedings for failure to comply with the orders of the Court. In trials concerning illegitimate, unborn children, the Court plays many roles. Sometimes the parties have lawyers, more often not. When they have not, the court is required to act as counsel for each side. After the evidence is all in, the Court resolves itself into a jury of matrony under a writ de ventre inspiciendo and deliberates on the question of whether or not there is a child. Having determined that there is, the court then considers whether or not the respondent in the case is the father, and having found that he is, sits as a chancellor and makes orders for payment of maternity expenses and future care and support of both mother and child. In all cases where dependency is alleged, the authority of the court is fairly clear from the statute, but in cases charging contributory delinquency, such is not the case. Many adult men, sometimes very old, in one instance 83, in another past 70, are brought before the court, charged with contributing to juvenile delinquency by taking indecent liberties with children, or with teaching them to steal or inducing or encouraging them to do many other prohibited and reprehensible acts. To order such a person to 'omit doing the acts complained of' and let him go would be utterly useless. Yet it is difficult to find express authority in the statute for imposing fines or imprisonment. Such authority was apparently contemplated because the act further states that the court may release the person proceeded against on probation. The right to release presupposes the right to hold and without the latter power, the statute, so far as it relates to delinquency, is wholly ineffectual.

"The Court has, as you know, concurrent jurisdiction with the district and county courts in all criminal cases where the accused is a minor, or where, regardless of the age of the defendant, the offense was committed against a minor.

"It also has jurisdiction in actions for annulment of marriage where either of the parties is under 21 at the date of the filing of the complaint. No new or additional grounds for annulment are set out in the statute, giving the Juvenile Court jurisdiction and consequently, the common law governs these actions in the Juvenile Court as in any other court. The Court has *exclusive* jurisdiction to grant adoption of minors and hardly a day goes by without one or more decrees of adoption being executed. The Court also has jurisdiction under Ch. 147 Compiled Laws 1921, known as the Redemption of Offenders Act. I have had no experience with this act for the reason that since I have been in the Court no cases have been filed under it.

"There are two things I would like to have to aid me in conducting the business of the Court.

"One is an unexpurgated edition of an autobiography of King Solomon.

"The other is more lawyers representing litigants in the Court. I suppose I can secure neither of them.

"I can, however, and do hereby invite you into the Court and I earnestly solicit your assistance.

"Humbly beseeching, your orator will ever pray."

Reports of Committees For the Past Year 1927-1928

Note: Practically all of the committee reports are printed in full. In some few instances exhibits attached to the reports have not been printed. Mention is made of that fact, however, and the complete report is on file with the Secretary. Such of the committees whose work is of a continuing nature will submit reports at the completion of the year's work.

Banquet Committee

For the Banquet Committee of the Denver Bar Association I desire to report to you that the annual banquet was duly held February 22, 1928, on which occasion the Honorable Silas H. Strawn, President of the American Bar Association, was our guest.

More than two hundred members of the Association attended the banquet over which Mr. Roger H. Wolcott presided as Toastmaster. The only speeches of the evening were addresses by Mr. James Grafton Rogers and Mr. Strawn.

I wish to express my appreciation of the work of the Committee in arranging for the meeting and the conduct of the same, and to especially express appreciation for the hearty cooperation evidenced by all the members of the Association who were asked to assist in connection with the meeting.

Very truly yours,

E. G. KNOWLES,
Chairman.

Judicial Salaries Committee

Your Committee on Judicial Salaries reports as follows:

The work of this Committee has been carried on with vigor under the able leadership of George P. Steele, Chairman, and under his direction, complete and comprehensive plans have been made and extensive preliminary work done, which it is hoped and believed will bring about the adoption of Amendment No. 1 at the November election.

Chairman Steele has been assured the support of many of the great newspapers in Colorado who have told him that they are favorable to the amendment and will work for its adoption. Considerable publicity has already been obtained for the amendment and much further work remains to be done to acquaint the electors with the necessity, propriety and justice of raising judicial salaries.

In connection with the work of the Denver Committee, a Speakers Bureau has been organized composed of thirty or more members of the Denver Bar, who will appear at luncheon clubs, service clubs, public meetings and secular gatherings of every sort and nature, who will present to the various audiences the merits of the amendment to raise judicial salaries. The Speakers Bureau is under the direction of Fred Y. Holland, Secretary of the Committee, and is composed of the following members of the Denver Bar: A.